

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

**MONICA SCRUGGS,**

Plaintiff,

-against-

**CHARTER COMMUNICATIONS,  
INC. d/b/a SPECTRUM, and THE  
CMI GROUP, INC., d/b/a A to Z  
CALL CENTER SERVICES, LP,**

Defendants.

Civil Case No.: 1:17-cv-00391-MAC

**CIVIL ACTION**

**AMENDED COMPLAINT  
and  
JURY TRIAL DEMAND**

Plaintiff MONICA SCRUGGS (“Plaintiff”), by and through her undersigned attorneys, brings this Amended Complaint against the Defendants CHARTER COMMUNICATIONS, INC. d/b/a SPECTRUM (“CHARTER”) and THE CMI GROUP, INC., d/b/a A to Z CALL CENTER SERVICES, LP (“CMI GROUP” and collectively “Defendants”), and respectfully sets forth, complains and alleges, upon information and belief, the following:

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Plaintiffs brings this action on her own behalf for damages and declaratory and injunctive relief arising from the Defendants’ violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA) and Texas Business and Commercial

1 Code § 305.053. Plaintiff has been receiving incessant unwanted calls from  
2 the Defendant, all in an attempt to collect a debt from an unrelated third  
3 party, and seeks damages as a result of those calls.

- 4 2. The TCPA prohibits auto-dialed calls which are placed to a called party's  
5 cellular phone without that party's consent. Senator Hollings, the TCPA's  
6 sponsor, described these auto-dialed calls as "the scourge of modern  
7 civilization. They wake us up in the morning; they interrupt our dinner at  
8 night; they force the sick and elderly out of bed; they hound us until we want  
9 to rip the telephone out of the wall." *Osorio v. State Farm Bank, F.S.B.*, 746  
10 F.3d 1242, 1255-56 (11th Cir. 2014), *citing*, 137 Cong. Rec. 30,821 (1991).  
11  
12 3. In 1991, Congress responded to these abuses by passing the TCPA. In  
13 enacting the TCPA, Congress made findings that telemarketing had become  
14 "pervasive due to the increased use of cost-effective telemarketing  
15 techniques." *See*, PL 102-243, § 2(1). "Residential telephone subscribers  
16 consider automated or prerecorded telephone calls, regardless of the content  
17 or the initiator of the message, to be a nuisance and an invasion of privacy."  
18 *Id.* § 2(10). The TCPA's findings also reflect Congress's conclusion that  
19 "[i]ndividuals' privacy rights, public safety interests, and commercial  
20 freedoms of speech and trade must be balanced in a way that protects the  
21 privacy of individuals and permits legitimate telemarketing practices." *Id.* §  
22 2(9). Consumers who receive these unauthorized calls thus have suffered a  
23 distinct privacy-related interest, namely the "intentional intru[sion] . . . upon  
24 their solitude or seclusion of their private affairs or concerns." *Intrusion*  
25 *Upon Seclusion*, Restatement (Second) of Torts § 652B (1977).  
26

## 27 **PARTIES**

- 28 4. Plaintiff is a natural person who resides in Orange, Texas.

1 5. Defendant Spectrum is a corporation incorporated in the State of Delaware  
2 with its principal place of business located in the State of Connecticut.

3 6. Defendant The CMI Group, Inc. is a corporation with its principal place of  
4 business located at 4200 International Parkway, Carrollton, TX 75007,  
5 which does business as A to Z Call Center Services, LP.  
6

7  
8 **JURISDICTION AND VENUE**

9 7. The Court has jurisdiction over this matter pursuant to 28 USC §1331. The  
10 Court also has pendent jurisdiction over the state law claims in this action  
11 pursuant to 28 U.S.C. § 1367(a).

12 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

13 **ALLEGATIONS OF FACTS**

14 9. Plaintiff repeats, reiterates and incorporates the allegations contained in the  
15 preceding paragraphs with the same force and effect as if the same were set  
16 forth at length herein.

17 10. On information and belief, on a date better known to the Defendant,  
18 Defendant Charter and Time Warner Cable (Defendant's predecessor,  
19 acquired by Defendant through merger) began its campaign of  
20 communicating with the Plaintiff via the use of an automated telephone  
21 dialing system and prerecorded messages throughout the past four years by  
22 calling the Plaintiff's cellular telephone phone number of (409) 882-8241 on  
23 hundreds of occasions.

24 11. When the Plaintiff would answer the Defendant's calls, the Defendant's  
25 representatives would ask to speak with an individual named E\*\*\* Lopez  
26 (name redacted to protect third parties privacy) about a debt owed by that  
27 individual.  
28

12. Plaintiff is the customary and sole user of the cellular phone number (409)

1 882-8241.

2 13.The Defendant called from numerous phone numbers, including but not  
3 limited to (800)892-2253.

4 14.Plaintiff confirmed that these phone numbers belong to Defendant by calling  
5 these numbers and being connected with automated voice saying:  
6 “Welcome to Spectrum.”

7 15.Defendant used an automated telephone dialing system to call the Plaintiff  
8 on her cell phone typically 3-4 times a day.

9 16.Defendant’s use of an automated telephone dialing system was clearly  
10 indicated by (1) the usage and placement of prerecorded messages (2) the  
11 placement of several or more calls to the Plaintiff per day, (3) hold music  
12 playing when the Plaintiff would answer the phone, and (4) the telltale clicks  
13 and pauses before a human voice would come on the line when the Plaintiff  
14 would answer the phone.  
15

16 17.The Plaintiff never gave the Defendant her prior, express permission to place  
17 calls to her cell phone regarding the account of E\*\*\* Lopez (name redacted  
18 to protect third parties privacy), and certainly never consented to any such  
19 calls placed via the use of an automated telephone dialing system or  
20 prerecorded voice messages.

21 18.Plaintiff had no wish to be contacted on her cell phone via the use of an  
22 autodialer or prerecorded voice, repeatedly told the Defendant that she was  
23 not E\*\*\* Lopez (name redacted to protect third parties privacy), that it had  
24 the wrong number, and that Defendant should stop calling her cell phone  
25 number.

26 19.By placing auto-dialed calls to the Plaintiff’s cell phone, the Defendant  
27 violated 47 USC §227(b)(A)(iii) and Texas Business and Commerce Code §  
28 305.053, both of which which prohibits using any automated telephone

1 dialing system or an artificial prerecorded voice to call any telephone number  
2 assigned to a cellular telephone service without the consent of the called  
3 party.

4 20.Plaintiff suffered actual damages because the Defendant's calls to her cell  
5 phone deprived her of the use of her cellular phone during the times that the  
6 Defendant was calling her cellular phones, depleted battery life of the  
7 cellular telephone, and by invading on the Plaintiff's right to privacy and  
8 seclusion, which was the very harm that Congress sought to prevent by  
9 enacting the TCPA.

10 21.The Defendant's repeated calls further caused the Plaintiff to be harassed,  
11 stressed, frustrated and annoyed. The Defendant's repeated calls interrupted  
12 the Plaintiff's day and wasted the Plaintiff's time spent answering and  
13 otherwise addressing these repeated phone calls.

14 22.Defendant's communication efforts attempted and/or directed towards the  
15 Plaintiff violated various provisions of the TCPA, including but not limited  
16 to 47 USC §227(b)(A)(iii), as well as Texas Business and Commerce Code  
17 § 305.053

18 23.As a result of Defendant's violations of the TCPA and the Texas Business  
19 and Commerce Code, Plaintiff has been damaged and is entitled to damages  
20 set forth by both of those statutes.

21  
22 **FIRST CAUSE OF ACTION**

23 **(Violations Of The TCPA By Charter)**

24 24.Plaintiff repeats and incorporates by reference all of the above paragraphs of  
25 the Complaint as though fully stated herein.

26 25.The foregoing acts and omissions of Defendants constitute numerous and  
27 multiple negligent violations of the TCPA, including but not limited to each  
28 and every one of the above cited provisions of 47 U.S.C. § 227(b) *et seq.*

1 26. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff  
2 is entitled to an award of \$500.00 for each and every negligent violation of  
3 the TCPA pursuant to 47 U.S.C. § 227(b)3.

4 27. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff  
5 is also entitled to an award of treble damages \$1,500.00 for each and every  
6 knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. §  
7 227(b)3.  
8

9  
10 **SECOND CAUSE OF ACTION**

11 **(Violations Of The Texas Business and Commerce Code By Charter)**  
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13  
14 28. Plaintiff repeats and incorporates by reference all of the above paragraphs of  
15 the Complaint as though fully stated herein.

16 29. The foregoing acts and omissions of Defendants constitute numerous and  
17 multiple negligent violations of the Texas Business and Commerce Code,  
18 including but not limited to Texas Business and Commerce Code § 305.053.

19 30. As a result of Defendant's violations of Texas Business and Commerce Code  
20 § 305.053 *et seq.* Plaintiff is entitled to an award of \$500.00 for each and  
21 every negligent violation of § 305.053 pursuant to § 305.053(b).

22 31. As a result of Defendant's violations of § 305.053 *et seq.* Plaintiff is also  
23 entitled to an award of treble damages \$1,500.00 for each and every knowing  
24 and/or willful violation of § 305.053 pursuant to § 305.053(c).

25 **THIRD CAUSE OF ACTION**

26 **(Invasion Of Privacy By Charter)**  
27

28 32. Plaintiff repeats and incorporates by reference all of the above paragraphs of  
the Complaint as though fully stated herein.

1 33. Defendant's hundreds of calls to the Plaintiff, all after the Plaintiff advised  
2 the Defendant that it had the wrong number and that it should stop calling  
3 her, was an intrusion on the Plaintiff's of seclusion, and an invasion of the  
4 Plaintiff's privacy.

5 34. Defendant's conduct was intention and would be highly offensive to any  
6 reasonable person. To repeat, the Defendant sought to contact an individual  
7 named E\*\*\* Lopez (name redacted to protect third parties privacy), in order  
8 to collect a debt from that individual. Even after being repeatedly advised  
9 by Plaintiff that it had the wrong number, the Defendant persisted in placing  
10 hundreds of calls to the Plaintiff seeking this individual, harassing the  
11 Plaintiff 3-4 times a day.

12 35. As a result of the Defendant's actions, the Plaintiff has been harmed, and is  
13 entitled to damages.  
14

#### 15 **FOURTH CAUSE OF ACTION**

##### 16 **(Violations Of The TCPA By The CMI Group)**

17 36. Plaintiff repeats and incorporates by reference all of the above paragraphs of  
18 the Complaint as though fully stated herein.

19 37. Upon information and belief, and based on documents provided by Charter  
20 in discovery, the CMI Group was hired by Charter to contact the Plaintiff.

21 38. Upon information and belief, and based on documents provided by Charter  
22 in discovery, the CMI Group communicated with the Plaintiff via the use of  
23 an automated telephone dialing system and prerecorded messages  
24 throughout the past four years by calling the Plaintiff's cellular telephone  
25 phone number of (409) 882-8241 on numerous occasions.

26 39. Defendant's use of an automated telephone dialing system was clearly  
27 indicated by (1) the usage and placement of prerecorded messages (2) the  
28

1 placement of several or more calls to the Plaintiff per day, (3) hold music  
2 playing when the Plaintiff would answer the phone, and (4) the telltale clicks  
3 and pauses before a human voice would come on the line when the Plaintiff  
4 would answer the phone.

5 40. The Plaintiff never gave the Defendant her prior, express permission to place  
6 calls to her cell phone regarding the account of E\*\*\* Lopez (name redacted  
7 to protect third parties privacy), and certainly never consented to any such  
8 calls placed via the use of an automated telephone dialing system or  
9 prerecorded voice messages.

10 41. By placing auto-dialed calls to the Plaintiff's cell phone, the Defendant  
11 violated 47 USC §227(b)(A)(iii) and Texas Business and Commerce Code §  
12 305.053, both of which which prohibits using any automated telephone  
13 dialing system or an artificial prerecorded voice to call any telephone number  
14 assigned to a cellular telephone service without the consent of the called  
15 party.  
16

17 42. The foregoing acts and omissions of Defendants constitute numerous and  
18 multiple negligent violations of the TCPA, including but not limited to each  
19 and every one of the above cited provisions of 47 U.S.C. § 227(b) *et seq.*

20 43. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff  
21 is entitled to an award of \$500.00 for each and every negligent violation of  
22 the TCPA pursuant to 47 U.S.C. § 227(b)3.

23 44. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff  
24 is also entitled to an award of treble damages \$1,500.00 for each and every  
25 knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. §  
26 227(b)3.  
27  
28

**FIFTH CAUSE OF ACTION**

**(Violations Of The Texas Business and Commerce Code By The CMI Group)**

45. Plaintiff repeats and incorporates by reference all of the above paragraphs of the Complaint as though fully stated herein.

46. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the Texas Business and Commerce Code, including but not limited to Texas Business and Commerce Code § 305.053.

47. As a result of Defendant's violations of Texas Business and Commerce Code § 305.053 *et seq.* Plaintiff is entitled to an award of \$500.00 for each and every negligent violation of § 305.053 pursuant to § 305.053(b).

48. As a result of Defendant's violations of § 305.053 *et seq.* Plaintiff is also entitled to an award of treble damages \$1,500.00 for each and every knowing and/or willful violation of § 305.053 pursuant to § 305.053(c).

**SIXTH CAUSE OF ACTION**

**(Invasion Of Privacy By The CMI Group)**

49. Plaintiff repeats and incorporates by reference all of the above paragraphs of the Complaint as though fully stated herein.

50. Defendant's hundreds of calls to the Plaintiff, all after the Plaintiff advised the Defendant that it had the wrong number and that it should stop calling her, was an intrusion on the Plaintiff's of seclusion, and an invasion of the Plaintiff's privacy.

51. Defendant's conduct was intention and would be highly offensive to any reasonable person. To repeat, the Defendant sought to contact an individual named E\*\*\* Lopez (name redacted to protect third parties privacy), in order to collect a debt from that individual. Even after being repeatedly advised

1 by Plaintiff that it had the wrong number, the Defendant persisted in placing  
2 hundreds of calls to the Plaintiff seeking this individual, harassing the  
3 Plaintiff numerous times a day.

4 52.As a result of the Defendant's actions, the Plaintiff has been harmed, and is  
5 entitled to damages.

6  
7 **DEMAND FOR TRIAL BY JURY**

8 53.Plaintiff hereby respectfully requests a trial by jury for all claims and issues  
9 in its Complaint to which it is or may be entitled to a jury trial.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff respectfully prays that judgment be entered  
12 against the Defendants as follows:

13 A. For mandatory statutory damages of \$500 pursuant to 47 USC  
14 §227(c)(2)(G)(3)(B), for each call placed to the Plaintiff's cellular phone in  
15 violation of the TCPA;

16 B. Plaintiff requests enhanced trebled damages of \$1,500 to be  
17 awarded to the Plaintiff per call, in accordance with the TCPA, for the Defendant's  
18 willful violations of the TCPA;

19 C. For mandatory statutory damages of \$500 pursuant to Texas  
20 Business and Commerce Code § 305.053, for each call placed to the Plaintiff's  
21 cellular phone in violation of the Texas Business and Commerce Code;

22 D. Plaintiff requests enhanced trebled damages of \$1,500 to be  
23 awarded to the Plaintiff per call, in accordance with the Texas Business and  
24 Commerce Code, for the Defendant's willful violations of the Texas Business and  
25 Commerce Code;

26 E. Entering an injunction, enjoining such future violations of the  
27 TCPA and Texas Business and Commerce Code.  
28

1 F. Awarding the Plaintiff compensation for the damages suffered  
2 as a result of the Defendant's harassment and invasion of her right to privacy and  
3 seclusion.

4 F. For any such other and further relief, as well as further costs, expenses  
5 and disbursements of this action, as this Court may deem just and proper.  
6

7 Dated: February 1, 2018  
8

9 /s/ Yitzchak Zelman  
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17 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served via operation of the Court's electronic filing system on the 1<sup>st</sup> day of February, 2018, to the following:

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Dated: February 2, 2018

/s/ Yitzchak Zelman  
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